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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

AUTHENTIFY PATENT CO LLC, a Washington State limited liability company Plaintiff, vs. PHONEFACTOR, INC., a Delaware corporation; ANXEBUSINESS CORP., a Delaware corporation; IMPRIVATA, INC., a Delaware corporation; DILIGENT ESECURITY INTERNATIONAL, INC., a Georgia corporation; ASSOCIATED BANC-CORP, a Wisconsin corporation; 4 MOBILE TECHNOLOGIES S.A., an Athens, Greece company; CYBERNET SYSTEMS CO., LTD., a Tokyo, Japan company; EXCELERATE SYSTEMS LLC., a Washington limited liability company; UNKNOWN PARTIES that resell or otherwise provide PhoneFactor products that infringe Plaintiff's patents Defendants.	**Case No.:** 2:12-cv-976 **COMPLAINT FOR PATENT INFRINGEMENT** **JURY DEMAND**

COMPLAINT FOR PATENT
INFRINGEMENT - 1

Plaintiff AUTHENTIFY PATENT CO LLC, ("Authentify") for its Complaint for Patent Infringement against PHONEFACTOR, INC., ANXEBUSINESS CORP., IMPRIVATA, INC., DILIGENT ESECURITY INTERNATIONAL, INC., ASSOCIATED BANC-CORP, 4 MOBILE TECHNOLOGIES S.A., CYBERNET SYSTEMS CO., LTD., and EXCELERATE SYSTEMS LLC (collectively "Defendants"), alleges as follows:

I. NATURE OF THE ACTION

1.   This is an action for patent infringement under the patent laws of the United States. Plaintiff Authentify is the owner of US Patent No. 6,934,858 (the '858 patent) and US Patent No. 7,574,733 (the '733 patent), both entitled "System and Method of Using the Public Switched Telephone Network in Providing Authentication or Authorization for Online Transactions."

2.   Defendant PhoneFactor, Inc. is a United States based manufacturer that makes, sells, licenses, offers for sale, or otherwise provides within the United States, products directed to out-of-band authentication including PhoneFactor Free, Standard, Extended, SMS Text Authentication Addition to Extended Edition, Transaction Verification, Phone Verification, and Software Development Kit that infringe one or more claims of the '858 and '733 patents.

3.   Defendants, upon information and belief, use, license, offer for license, sell, offer for sale, resell or otherwise provide PhoneFactor, Inc. infringing products to end customers in the United States and/or worldwide.

4.   Through this action, Authentify seeks to enjoin defendants from selling, licensing, offering for sale or otherwise providing out-of-band authentication products in the United States and worldwide, and to recover damages caused by Defendants' activities.

II. PARTIES

5.   Plaintiff Authentify Patent Co, LLC ("Authentify") is a Washington state limited liability company with its principal place of business in Redmond, Washington. Authentify owns the entire right, title, and interest in U.S. Patents No. 6,934,858 and 7,574,733 (attached

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1   hereto as Exhibits A and B), which were assigned to it by Authentify, Inc., a Delaware company,

2   on February 22, 2012, and recorded with the USPTO on March 17, 2012.

3   6.   PHONEFACTOR INC. ("PhoneFactor") is a Delaware corporation located at

4   7301 W. 129th St., Overland Park, KS 66213.

5   7.   PhoneFactor is in the business of providing products and services, including out-

6   of-band authentication products used for user verification and system security.

7   8.   ANXEBUSINESS CORP. ("ANXeBusiness") is a Delaware corporation located

8   at 2000 Town Center Ste. 2050, Southfield, MI 48075.

9   9.   ANXeBusiness, upon information and belief, resells or otherwise provides

10   PhoneFactor products and services to end users within the United States and/or worldwide.

11   10.   IMPRIVATA, INC. ("Imprivata") is a Delaware corporation located at 10

12   Maguire Road, Building 4, Lexington, MA 02421-3120.

13   11.   Imprivata, upon information and belief, resells or otherwise provides PhoneFactor

14   products and services to end users within the United States and/or worldwide.

15   12.   DILIGENT ESECURITY INTERNATIONAL, INC. ("Esecurity") is a Georgia

16   corporation located at 970 Nightingale Walk, Alpharetta, GA 30022.

17   13.   Esecurity, upon information and belief, resells or otherwise provides PhoneFactor

18   products and services to end users within the United States and/or worldwide.

19   14.   ASSOCIATED BANC-CORP ("Associated Banc") is a Wisconsin corporation

20   located at 1200 Hansen Road, Green Bay, WI 54304.

21   15.   Associated Banc, upon information and belief, resells or otherwise provides

22   PhoneFactor products and services to end users within the United States.

23   16.   4 MOBILE TECHNOLOGIES S.A. ("4 Mobile") is an Athens, Greece company

24   located at Viltanioti 36, Kifisias, 145 64, Athens, Greece.

25   17.   4 Mobile, upon information and belief, resells or otherwise provides PhoneFactor

26   products and services to end users within the United States and/or worldwide.

18.   CYBERNET SYSTEMS CO., LTD. ("Cybernet") is a Tokyo, Japan company located at FUJISOFT Bldg. 3 Kanda-neribeicho, Chiyoda-ku, Tokyo, Japan 101-0022.

19.   Cybernet, upon information and belief, resells or otherwise provides PhoneFactor products and services to end users within the United States and/or worldwide.

20.   EXCELERATE SYSTEMS LLC. ("Excelerate") is a Washington limited liability company located at 8201 164th Avenue NE, Suite 200, Redmond, WA 98052.

21.   Excelerate, upon information and belief, resells or otherwise provides PhoneFactor products and services to end users within the United States and/or worldwide.

III. JURISDICTION AND VENUE

22.   This case arises under the patent laws of the United States, 35 U.S.C. § 101 et seq.

23.   This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338. Upon information and belief, PhoneFactor purposefully directs its activities toward this forum. PhoneFactor places its products into the stream of commerce by offering them through its website www.phonefactor.com for immediate download and use, and through contacts by its direct sales force to Washington residents. Upon information and belief, Defendants place PhoneFactor products into the stream of commerce by offering them through their respective websites and/or through contacts by their direct sales forces to Washington residents.

24.   Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and §1400(b).

IV. RELEVANT FACTUAL BASIS FOR THE PRESENT ACTION

Authentify Patents and Out-of-Band Authentication Technology Disclosed

25.   On August 25, 2005, the United States Patent and Trademark Office ("USPTO") issued U.S. Patent No. 6,934,858 entitled "System and Method of using the Public Switched Telephone Network in Providing Authentication or Authorization for Online Transactions." The

1 '858 patent has a priority date of December 15, 1999, and an expiration date of June 15, 2023.

2 See Exhibit A.

3   26.   On August 11, 2009, the USPTO issued U.S. Patent No. 7,574,733, based on a

4 continuation of the '858 patent with the same title. The '733 patent has a priority date of

5 December 15, 1999 and an expiration date of June 15, 2023. See Exhibit B.

6   27.   Both '858 and '733 disclose systems and methods for out-of-band authentication

7 used to verify that a user providing credentials (e.g. a username and password) to access a secure

8 website over a computer network is actually the person to whom those credentials were issued.

9   28.   The user's identity is verified by simultaneously communicating with a device

10 associated with the user that (1) may be different than the device used to access the website and

11 (2) uses a different network. For example, if a user logs in to website for a personal banking

12 system secured by out-of-band authentication, the system would locate the registered phone

13 number for that user and immediately place a phone call or send a text message using the

14 telephone network to the user's phone. The system will deny access to the website until the user

15 responds in a way to confirm that the registered user is the one trying to access the website.

16   29.   Implementations of out-of-band authentication described in the '858 and '733

17 patents are broader than the above example and fall into one of three general categories.

18   30.   **Category 1: Confirmation information is sent to the first device (e.g.**

19 **terminal) to be entered into the second device (e.g. the user's cellphone).** For example, a

20 user enters credentials (e.g. username and password) into a terminal ("first device") to access a

21 system through an Internet website. If the system recognizes the credentials, then (1)

22 confirmation information is displayed on the terminal, (2) a call or text message is immediately

23 sent to the user's phone (the "second device"), and (3) instructions are given to enter the

24 confirmation information into the phone. If the entered response matches what the system

25 expects, then the user will be allowed to access the website. This functionality is disclosed in the

26 '858 patent (Exhibit A).

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31.   **Category 2: Confirmation information is sent to the second device (e.g. the user's cellphone) to be entered in to the first device (e.g. terminal).** For example, a user enters credentials (e.g. a username and password) into a terminal ("first device") to access a system through an Internet website. If the system recognizes the credentials, then (1) a call or text message containing confirmation information is immediately sent to the user's phone ("second device"), and (2) instructions are given to enter the confirmation information into the terminal. If the entered response matches what the system expects, then the user will be allowed to access the website. This functionality is disclosed in the '858 patent (Exhibit A) and in the '733 patent (Exhibit B).

32.   **Category 3: Confirmation information is both sent to and received from the second device (e.g. the user's cellphone).** For example, a user enters credentials (e.g. username and password) into a terminal ("first device") to access a system through an Internet website. If the system recognizes the credentials then (1) a call or text message containing confirmation information is immediately sent to the user's phone ("second device"), and (2) instructions are given to enter the confirmation information back into the phone.   If the entered response matches what the system expects, then the user will be allowed to access the website. This functionality is disclosed in the '858 patent (Exhibit A).

PhoneFactor Products and Services

33.   PhoneFactor provides products and services for out-of-band authentication, including PhoneFactor Free, Standard, Extended, SMS Text Authentication Addition to Extended Edition, Transaction Verification, Phone Verification, and Software Development Kit (SDK).

34.   PhoneFactor products include software to integrate PhoneFactor security with user applications, a portal used to administer user access settings (e.g. to associate user credentials with user phone numbers), and a cloud-based service used to contact the user's phone. See diagram, Exhibit D, Section 1.

35.   PhoneFactor products are integrated with user applications either through the PhoneFactor Agent, which includes a configuration "wizard" to enable integration with common applications or sign-on systems, or through custom software development using the PhoneFactor Direct SDK (software development kit).

36.   PhoneFactor's cloud-based service places phone calls, sends text messages, or pushes notifications to the user's phone, processes the results received from the user, and returns either success or failure which is used by the application to allow or deny access.

37.   The PhoneFactor Service is operated by PhoneFactor and supported by a network of redundant data centers and telecommunications providers accessible worldwide.

PhoneFactor Sales Channel

38.   Upon information and belief, PhoneFactor offers the above services directly to end customers, for OEM resale through partners, and through sales channels listed above throughout the United States and/or worldwide.

V. CLAIM FOR '858 AND '733 PATENT INFRINGEMENT FOR CONFIRMATION INFORMATION SENT TO PHONE FOR ENTRY INTO TERMINAL ("Category 2")

39.   Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 38 of this complaint as if fully set forth herein.

40.   Upon information and belief, Defendants make, use, license, offer to license, sell, or offer to sell PhoneFactor products within the United States including PhoneFactor SMS (Text) Authentication Addition to Extended Edition Using Standard One-Time Password (OTP), and certain custom products developed using the PhoneFactor Direct SDK.

41.   Upon information and belief, these products have infringed and continue to infringe the '733 patent violating 35 U.S.C. § 271(a) through (c). Infringement claim charts and supporting reference documentation are included herein under Exhibits C and D.

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42.   Upon information and belief, PhoneFactor was aware of the '858 and '733 patents in the course of prosecuting patent applications assigned to it and therefore willfully engaged in infringement.

VI. CLAIM FOR '858 PATENT INFRINGEMENT FOR PURE OUT-OF-BAND AUTHENTICATION PRODUCTS ("Category 3")

43.   Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 38 of this complaint as if fully set forth herein.

44.   Upon information and belief, Defendants make, use, license, offer to license, sell, or offer to sell PhoneFactor products including PhoneFactor Free, Standard, Extended, SMS Text Authentication Addition to Extended Edition, Transaction Verification, and Phone Verification.

45.   Upon information and belief, these products have infringed and continue to infringe the '858 patent violating 35 U.S.C. § 271(a) through (c). Infringement claim charts and supporting reference documentation are included herein under Exhibits C and D.

46.   Upon information and belief, PhoneFactor was aware of the '858 and '733 patents in the course of prosecuting patent applications assigned to it and therefore willfully engaged in infringement.

VII. CLAIM FOR '858 AND '733 PATENT INFRINGEMENT UNDER 35 U.S.C. §271(f)

47.   Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 38 of this complaint as if fully set forth herein.

48.   Upon information and belief, Defendants have supplied or caused to be supplied, without authority, all or a substantial portion of the components of a patent invention in such manner to actively induce the combination of such components outside the United States in a manner that would infringe the patent if such combination occurred within the United States.

49.   Infringement claim charts and supporting reference documentation are included herein under Exhibits C and D.

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50.   As a result, Defendants have infringed and continue to infringe the '858 and '733 patents in violation of 35 U.S.C. 217(f).

VIII. JURY TRIAL DEMAND

51.   Plaintiff hereby requests a trial by jury on all issues so triable.

IX. REQUEST FOR RELIEF

Plaintiff Authentify Patent Co, LLC respectfully requests that this Court enter judgment and grant relief as follows:

A.   That defendants have infringed and continue to infringe one or more claims of the '858 and/or '733 patents in violation of 35 U.S.C. § 271(a) through (c).

B.   That defendants have infringed and continue to infringe one or more claims of the '858 and/or '733 patents in violation of 35 U.S.C. §271(f).

C.   Award Authentify Patent Co its compensatory damages resulting from defendant's infringement together with costs, attorney's fees, and prejudgment interest as fixed by the Court, as provided by 35 U.S.C. §284.

D.   That defendants and all related parties (as defined in Fed.R.Civ.P 65(d)) are preliminarily and permanently enjoined from further infringement of the '858 and '733 patents pursuant to 35 U.S.C. § 283.

E.   That the Court grant such other and further relief as it may deem just and proper.

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1   Respectfully submitted this 6th day of June, 2012.

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3   THE BLAIR LAW FIRM, PLLC

4   By: s/Steven R. Blair

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